

No. 21-14269

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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STATE OF GEORGIA, *ET AL.*,

*Plaintiffs-Appellees,*

v.

PRESIDENT OF THE UNITED STATES, *ET AL.*,

*Defendants-Appellants.*

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On Appeal from the U.S. District Court for the  
Southern District of Georgia (1:21-cv-163-RSB-BKE)

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**BRIEF OF AMERICAN MEDICAL ASSOCIATION, AMERICAN  
COLLEGE OF PHYSICIANS, AMERICAN ACADEMY OF  
FAMILY PHYSICIANS, AMERICAN ACADEMY OF  
PEDIATRICS, AMERICAN ACADEMY OF ALLERGY, ASTHMA  
& IMMUNOLOGY, AMERICAN COLLEGE OF CHEST  
PHYSICIANS, AMERICAN COLLEGE OF MEDICAL GENETICS  
AND GENOMICS, AMERICAN GERIATRICS SOCIETY,  
AMERICAN MEDICAL WOMEN'S ASSOCIATION, AMERICAN  
PSYCHIATRIC ASSOCIATION, AMERICAN SOCIETY FOR  
CLINICAL PATHOLOGY, AMERICAN SOCIETY OF  
HEMATOLOGY, AMERICAN THORACIC SOCIETY, SOCIETY  
OF INTERVENTIONAL RADIOLOGY, AND AMERICAN LUNG  
ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF  
DEFENDANTS-APPELLANTS' MOTION FOR STAY  
OF THE DISTRICT COURT'S DECEMBER 7, 2021  
ORDER PENDING APPEAL**

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**CERTIFICATE OF INTERESTED PERSONS AND  
CORPORATE DISCLOSURE STATEMENTS**

Pursuant to Eleventh Circuit Rule 26.1-1, counsel for Proposed *Amici* certify that, to the best of their knowledge, the Certificate of Interested Persons filed by Defendants-Appellants in their motion for stay of the district court's December 7, 2021 order pending appeal, contains a correct complete list of the people and entities that have an interest in the outcome of this appeal.

The American Medical Association is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of the AMA.

The American College of Physicians is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of the ACP.

The American Academy of Family Physicians is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of the AAFP.

The American Academy of Pediatrics is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of the AAP.

The American Academy of Allergy, Asthma & Immunology is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of the AAAAI.

The American Academy of Chest Physicians is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of CHEST.

The American College of Medical Genetics and Genomics is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of the ACMG.

The American Geriatrics Society is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of the AGS.

The American Medical Women's Association is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of the AMWA.

The American Psychiatric Association is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of the APA.

The American Society for Clinical Pathology is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of the ASCP.

The American Society of Hematology is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of the ASH.

The American Thoracic Society is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of the ATS.

The Society of Interventional Radiology is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of SIR.

The American Lung Association is a non-profit entity and has no parent corporation. No publicly owned corporation owns 10% or more of the stocks of the ALA.

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| Am. Med. Ass’n, <i>AMA, AHA, ANA urge vaccinations as U.S. reaches 750,000 COVID-19 deaths</i> , <a href="https://bit.ly/3C07CIS">https://bit.ly/3C07CIS</a> .....  | 10      |
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| M.P. Cassar et al., <i>Symptom Persistence Despite Improvement in Cardiopulmonary Health – Insights from longitudinal CMR, CPET and lung function testing post-COVID-19</i> , EClinicalMedicine (2021), <a href="https://bit.ly/3H7AeDB">https://bit.ly/3H7AeDB</a> .....   | 4       |
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| Nakia S. Clemmons, et al., <i>Measles — United States, January 4–April 2, 2015</i> , Morbidity and Mortality Weekly Rep., Vol. 64 Issue 14: 373–376 (Apr. 17, 2015), <a href="https://bit.ly/3l3bkvK">https://bit.ly/3l3bkvK</a> .....  | 11, 12  |

|  |    |
|--|----|
| Rajaie Batniji, <i>Historical Evidence to Inform COVID-19 Vaccine Mandates</i> , 397 Lancet 791 (2021),<br><a href="https://bit.ly/3pW3HbR">https://bit.ly/3pW3HbR</a> .....               | 11 |
| CDC, <i>Benefits of Getting a COVID-19 Vaccine</i> (last updated Nov. 29, 2021), <a href="https://bit.ly/3H6BsiF">https://bit.ly/3H6BsiF</a> .....   | 6  |
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| COVID-19 Vaccination and Testing; Emergency Temporary Standard, 86 Fed. Reg. 61,402 (Nov. 5, 2021) .....   | 9  |
| Carlos del Rio et al., <i>Confronting the Delta Variant of SARS-CoV-2, Summer 2021</i> , 326 JAMA 1001 (2021),<br><a href="https://bit.ly/3bVL5Cj">https://bit.ly/3bVL5Cj</a> .....        | 10 |



|   |      |
|---|------|
| FDA, <i>COVID-19 vaccine safety surveillance</i> (Jul. 12, 2021),<br><a href="https://bit.ly/3y1dDET">https://bit.ly/3y1dDET</a> .....  | 7    |
| Federal Acquisition Regulatory Council, <i>Memorandum to<br/>Chief Acquisition Officers et al. re: Issuance of Agency<br/>Deviations to Implement Executive Order 14042</i> (Sept. 30,<br>2021), <a href="https://bit.ly/3qAlUha">https://bit.ly/3qAlUha</a> .....  | 2    |
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| Kathy Katella, <i>Comparing the COVID-19 Vaccines: How Are<br/>They Different?</i> , Yale Med. (Nov. 19, 2021),<br><a href="https://bit.ly/307jEU5">https://bit.ly/307jEU5</a> .....  | 7, 8 |
| Nicola P. Klein et al., <i>Surveillance for Adverse Events After<br/>COVID-19 mRNA Vaccination</i> , 326 <i>JAMA</i> 1390 (2021),<br><a href="https://bit.ly/3F1XQYM">https://bit.ly/3F1XQYM</a> .....  | 6, 7 |
| Katherine Lontok, <i>How Effective Are COVID-19 Vaccines in<br/>Immunocompromised People</i> , Am. Society for Microbiology<br>(Aug. 12, 2021), <a href="https://bit.ly/3F24HBh">https://bit.ly/3F24HBh</a> .....   | 10   |
| Kevin M. Malone & Alan R. Hinman, <i>Vaccination Mandates:<br/>The Public Health Imperative and Individual Rights</i> , in<br><i>Law in Public Health Practice</i> 262 (1st ed., 2003),<br><a href="https://bit.ly/3BUviyg">https://bit.ly/3BUviyg</a> .....  | 11   |
| Apoorva Mandavilli, <i>C.D.C. Internal Report Calls Delta<br/>Variant as Contagious as Chickenpox</i> , N.Y. Times (Jul. 30,<br>2021), <a href="https://nyti.ms/3EtJXTb">https://nyti.ms/3EtJXTb</a> .....  | 4    |

- Lucy A. McNamara et al., *Estimating the Early Impact of the US COVID-19 Vaccination Programme on COVID-19 Cases, Emergency Department Visits, Hospital Admissions, and Deaths Among Adults Aged 65 Years and Older: An Ecological Analysis of National Surveillance Data*, Lancet (Nov. 3, 2021), <https://bit.ly/31NqTRq> .....9
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- Safer Federal Workforce Task Force, *COVID–19 Workplace Safety: Guidance for Federal Contractors and Subcontractors* (Nov. 10, 2021), <https://bit.ly/3Cd6vFG> .....2
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- Mark W. Tenforde, *Association Between mRNA Vaccination and COVID-19 Hospitalization and Disease Severity*, 326 JAMA 2043 (2021), <https://bit.ly/3bZBHhb>.....8

Michelle A. Waltenburg et al., *Coronavirus Disease among Workers in Food Processing, Food Manufacturing, and Agriculture Workplaces*, 27 *Emerging Infectious Diseases* 243 (2021), <https://bit.ly/3kp3Lip> .....5

WHO, *Update 64—COVID-19 Prevention at the Workplace*, World Health Organization (Jul. 28, 2021), <https://bit.ly/307J1V6> .....5

Stanley Xu et al., *COVID-19 Vaccination and Non-COVID-19 Mortality Risk — Seven Integrated Health Care Organizations, United States, December 14, 2020–July 31, 2021*, 70 *Morbidity & Mortality Weekly Rep.* 1520 (2021), <https://bit.ly/3D1ZRn4> .....7

## **INTEREST OF *AMICI CURIAE***

As provided in the accompanying motion for leave to file, *Amici* are associations representing medical professionals and patients across disciplines. They accordingly have a strong interest in providing evidence-based guidance on public health issues and working to reduce the spread of contagious illnesses.<sup>1</sup>

## **STATEMENT OF THE ISSUES**

Whether this Court should stay the district court's preliminary injunction barring the President from enforcing vaccination requirements among federal contractors, given the public interest in promoting public health and ending the COVID-19 pandemic.

## **SUMMARY OF THE ARGUMENT**

The United States is in an unprecedented and ongoing public health crisis. SARS-CoV-2, the causative agent of COVID-19, has wreaked havoc in communities across the country, taxed hospitals to the point of

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<sup>1</sup> *Amici* certify that no party's counsel authored this brief in whole or in part, no party or party's counsel contributed money intended to fund this brief, and no person other than *amici*, their members, and their counsel contributed money intended to fund this brief.

rationing care, upended the lives of countless families, and killed over 794,000 Americans.

Many COVID-19 outbreaks have occurred in workplaces, inducing an occupational health emergency. Workers—including federal contractor employees—who contract the SARS-CoV-2 virus, or worse, develop COVID-19 symptoms, disrupt workplace efficiency and must stay home during recovery. For nearly two years, *Amici* have monitored the COVID-19 pandemic and advocated for evidence-based public health measures to end it. *Amici*'s extensive review of the medical literature demonstrates that COVID-19 vaccines authorized or approved by the Food and Drug Administration are safe and effective, and their widespread use is the best way to keep COVID-19 from spreading within workplaces. Maintaining the injunction against the Safer Federal Workforce Task Force's Guidance for Federal Contractors and Subcontractors<sup>2</sup> would therefore severely and irreparably harm workers and undermine the public interest.

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<sup>2</sup> See Safer Federal Workforce Task Force, *COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors* (Nov. 10, 2021), <https://bit.ly/3Cd6vFG>; Federal Acquisition Regulatory Council, *Memorandum to Chief Acquisition Officers et al. re: Issuance of Agency*

## ARGUMENT

### I. **COVID-19 poses a grave danger to the health of federal contractor employees.**

COVID-19 presents a severe risk to public health. Although most people infected with COVID-19 will experience mild to moderate symptoms, infected individuals can become seriously ill or die at any age. As of December 14, 2021, there have been over forty-nine million confirmed cases of COVID-19 in the United States,<sup>3</sup> leading to more than 3,471,000 hospitalizations<sup>4</sup> and over 794,000 deaths—more than twenty-two times the number of people in the United States who die from influenza in the average year.<sup>5</sup> Even those who recover from COVID-19 may experience debilitating symptoms lasting for several months after the acute phase of infection. A systematic review of forty-five studies including 9,751 participants found that 73% of infected individuals

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*Deviations to Implement Executive Order 14042* (Sept. 30, 2021), <https://bit.ly/3qAlUha>.

<sup>3</sup> *COVID Data Tracker*, Centers for Disease Control and Prevention (Dec. 14, 2021), <https://bit.ly/3Du7Glz>.

<sup>4</sup> *COVID Data Tracker Weekly Review*, CDC (Dec. 10, 2021), <https://bit.ly/3EYAdAb>.

<sup>5</sup> *Disease Burden of Flu*, CDC (Oct. 4, 2021), <https://bit.ly/3ocAuZA>.

experienced at least one long-term symptom.<sup>6</sup> Over half of previously hospitalized patients continue to experience cardiopulmonary symptoms and abnormalities six months later.<sup>7</sup> Studies also indicate that COVID-19 is associated with increased risk of neurological and psychiatric outcomes.<sup>8</sup>

SARS-CoV-2 is highly transmissible. The original strain was more contagious than the flu, and the Delta variant of SARS-CoV-2, currently the leading strain, is more than twice as contagious as the original.<sup>9</sup> Crucially, over 50% of the spread of the virus may be from individuals who have no symptoms at the time of transmission.<sup>10</sup>

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<sup>6</sup> Tahmina Nasserie et al., *Assessment of the Frequency and Variety of Persistent Symptoms: A Systematic Review*, JAMA Network Open, May 26, 2021, <https://bit.ly/3qocFkk>.

<sup>7</sup> M.P. Cassar et al., *Symptom Persistence Despite Improvement in Cardiopulmonary Health – Insights from longitudinal CMR, CPET and lung function testing post-COVID-19*, EClinicalMedicine (2021), <https://bit.ly/3H7AeDB>.

<sup>8</sup> Maxime Taquet, et al., *6-month neurological and psychiatric outcomes in 236379 survivors of COVID-19: a retrospective cohort study using electronic health records*, The Lancet Psychiatry, (Apr. 6, 2021), <https://bit.ly/3DXTbGo>.

<sup>9</sup> *Delta Variant: What We Know About the Science*, CDC (Aug. 26, 2021), <https://bit.ly/3plAmcy>; Apoorva Mandavilli, *C.D.C. Internal Report Calls Delta Variant as Contagious as Chickenpox*, N.Y. Times (Jul. 30, 2021), <https://nyti.ms/3EtJXTb>.

<sup>10</sup> *Use of Cloth Masks to Control the Spread of SARS-CoV-2*, CDC (May 7, 2021), <https://bit.ly/30inWYx>.



Workplace transmission has been a major factor in the spread of COVID-19. COVID-19 outbreaks have occurred among workers—including federal contractor employees—in numerous industries, including service and sales, education, hospitality, construction, domestic work, meat-processing, transportation, prison, and of course healthcare industries.<sup>11</sup> Studies found widespread COVID-19 outbreaks in meat- and poultry-processing facilities and “identified high proportions of asymptomatic or presymptomatic infections.”<sup>12</sup>

Forty-five percent more people reported missing work for medical reasons during 2020 than the previous twenty-year average.<sup>13</sup> Another study found that adults who tested positive for SARS-CoV-2 were significantly more likely to report going to an office or school setting than

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<sup>11</sup> *Update 64—COVID-19 Prevention at the Workplace*, World Health Organization (Jul. 28, 2021), <https://bit.ly/307J1V6>; *Investigating and Responding to COVID-19 Cases in Non-Healthcare Work Settings*, CDC (Oct. 25, 2021), <https://bit.ly/3qC74XN>.

<sup>12</sup> Michelle A. Waltenburg et al., *Coronavirus Disease among Workers in Food Processing, Food Manufacturing, and Agriculture Workplaces*, 27 *Emerging Infectious Diseases* 243 (2021), <https://bit.ly/3kp3Lip>.

<sup>13</sup> Charisse Jones & Matt Wynn, *Coronavirus and the Workplace: The Virus Causes Record Numbers of Job Absences in 2020*, USA Today (Jan. 21, 2021), <https://bit.ly/3C39lgx>.



adults who tested negative.<sup>14</sup> Protecting workers from COVID-19 is especially important given that “a large proportion of the United States workforce, across a variety of occupational sectors, are exposed to disease or infection at work more than once a month.”<sup>15</sup> Requiring federal contractor employees to be vaccinated is not just an efficiency-promoting practice; it is life-saving.

## **II. Vaccines provide a safe and effective way to help reduce transmission of COVID-19 in the workplace.**

COVID-19 vaccines are safe. Before FDA authorized/approved and CDC recommended use of the COVID-19 vaccines, scientists conducted clinical trials. FDA, CDC, and their advisory committees conducted rigorous reviews of the data, and continue to monitor the vaccines’ safety.<sup>16</sup> A study of over six million people who received the Pfizer or

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<sup>14</sup> Kiva A. Fisher et al., *Telework Before Illness Onset Among Symptomatic Adults Aged  $\geq 18$  Years With and Without COVID-19 in 11 Outpatient Health Care Facilities — United States, July 2020*, 69 Morbidity & Mortality Weekly Rep. 1648 (Apr. 28, 2020), <https://bit.ly/3F5Ybt8>.

<sup>15</sup> Marissa G. Baker et al., *Estimating the burden of United States workers exposed to infection or disease: A key factor in containing risk of COVID-19 infection*, PLoS ONE (2020), <https://bit.ly/3BWD0q8>.

<sup>16</sup> *Benefits of Getting a COVID-19 Vaccine*, CDC (last updated Nov. 29, 2021), <https://bit.ly/3H6BsiF>; Nicola P. Klein et al., *Surveillance for Adverse Events After COVID-19 mRNA Vaccination*, 326 JAMA 1390,

Moderna vaccines found that serious side effects are very rare.<sup>17</sup> Another study concluded that there is no increased risk for mortality among recipients of any of the COVID-19 vaccines, and that vaccine recipients in fact had lower non-COVID-19 mortality risks than did unvaccinated people.<sup>18</sup>

COVID-19 vaccines are also effective. First, each of the three vaccines greatly reduces the likelihood of contracting infection. The Pfizer, Moderna, and J&J/Janssen vaccines are 91.3%, 90%, and 72% effective against infection, respectively.<sup>19</sup> Although the vaccines' efficacy wanes over time, initial data on Pfizer booster shots show that they may boost the vaccine efficacy to over 95%.<sup>20</sup>

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(2021), <https://bit.ly/3F1XQYM>; *COVID-19 vaccine safety surveillance*, FDA (Jul. 12, 2021), <https://bit.ly/3y1dDET>.

<sup>17</sup> Klein et al., *supra* n. 16.

<sup>18</sup> Stanley Xu et al., *COVID-19 Vaccination and Non-COVID-19 Mortality Risk — Seven Integrated Health Care Organizations, United States, December 14, 2020–July 31, 2021*, 70 *Morbidity & Mortality Weekly Rep.* 1520 (2021), <https://bit.ly/3D1ZRn4>.

<sup>19</sup> Kathy Katella, *Comparing the COVID-19 Vaccines: How Are They Different?*, Yale Med. (Nov. 19, 2021), <https://bit.ly/307jEU5>.

<sup>20</sup> *Pfizer and BioNTech Announce Phase 3 Trial Data Showing High Efficacy of a Booster Dose of Their COVID-19 Vaccine*, Pfizer (Oct. 21, 2021), <https://bit.ly/3EXQa9K>.

Second, the vaccines are even more effective against serious illness and death. Studies have estimated the Pfizer, Moderna, and J&J/Janssen vaccines as 95.3–97%, 95%, and 86% effective against severe disease, respectively.<sup>21</sup> The vaccines are likewise highly effective against hospital admissions, “even in the face of widespread dissemination of the delta variant.”<sup>22</sup> According to one analysis, between March 11 and August 15, 2021, unvaccinated people accounted for 84.2% of patients hospitalized for COVID-19, including those infected with the Delta variant.<sup>23</sup> As of October 30, 2021, the age-adjusted rate of COVID-19 associated hospitalizations in unvaccinated adults was more than 12 times that of fully vaccinated adults.<sup>24</sup>

The initial rollout of COVID-19 vaccines in the United States “was associated with reductions in COVID-19 cases, emergency department

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<sup>21</sup> Katella, *supra* n. 19.

<sup>22</sup> Sara Y. Tartof et al., *Effectiveness of mRNA BNT162b2 COVID-19 Vaccine Up to 6 Months*, 398 *Lancet* 1407, 1407 (2021), <https://bit.ly/3ouPvqS>.

<sup>23</sup> Mark W. Tenforde, *Association Between mRNA Vaccination and COVID-19 Hospitalization and Disease Severity*, 326 *JAMA* 2043 (2021), <https://bit.ly/3bZBHhb>.

<sup>24</sup> *See Rates of laboratory-confirmed COVID-19 hospitalizations by vaccination status*, CDC (last updated Dec. 2, 2021), <https://bit.ly/3oIwsZ4>.

visits, and hospital admissions among older adults.”<sup>25</sup> In August 2021, unvaccinated people had a 6.1 times greater risk of testing positive for COVID-19, and an 11.3 times greater risk of dying from COVID-19, than fully vaccinated people.<sup>26</sup>

Third, evidence suggests that those who are fully vaccinated are contagious for shorter periods than unvaccinated people.<sup>27</sup> Most importantly, “[r]egardless of viral loads in vaccinated and unvaccinated individuals, the fact remains clear that unvaccinated people pose a higher risk of transmission to others than vaccinated people, simply because they are much more likely to get COVID-19 in the first place.”<sup>28</sup>

### **III. The more federal contractor employees who get vaccinated, the safer the workplace becomes.**

The more federal contractor employees who get vaccinated, the closer we are to slowing the spread of the virus, creating a safer

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<sup>25</sup> Lucy A. McNamara et al., *Estimating the Early Impact of the US COVID-19 Vaccination Programme on COVID-19 Cases, Emergency Department Visits, Hospital Admissions, and Deaths Among Adults Aged 65 Years and Older: An Ecological Analysis of National Surveillance Data*, *Lancet* (Nov. 3, 2021), <https://bit.ly/31NqTRq>.

<sup>26</sup> *Rates of COVID-19 Cases and Deaths by Vaccination Status*, CDC (last visited Dec. 13, 2021), <https://bit.ly/3F3YMLV>.

<sup>27</sup> See COVID-19 Vaccination and Testing; Emergency Temporary Standard, 86 Fed. Reg. 61,402, 61,419 (Nov. 5, 2021).

<sup>28</sup> *Id.*

environment, and preventing employee illness due to COVID-19. As the American Medical Association has explained, “[t]he only way to truly end this pandemic is to ensure *widespread* vaccination.”<sup>29</sup> Widespread vaccination is the only practical way to push the effective reproduction rate of the SARS-CoV-2 virus below one, the rate at which endemic transmission begins to die out.

Widespread vaccination reduces the likelihood of infections among both vaccinated and unvaccinated people. “[S]tates with high vaccination rates (>70% of the population) are reporting lower numbers of vaccine breakthrough cases as well as hospitalizations and deaths from COVID-19.”<sup>30</sup> This is particularly important for people who cannot get vaccinated due to age or medical condition, as well as immunocompromised people, who remain particularly susceptible to infection even after vaccination.<sup>31</sup>

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<sup>29</sup> Press Release, Am. Med. Ass’n, *AMA, AHA, ANA urge vaccinations as U.S. reaches 750,000 COVID-19 deaths* (Nov. 4, 2021) (emphasis added), <https://bit.ly/3C07CIS>.

<sup>30</sup> Carlos del Rio et al., *Confronting the Delta Variant of SARS-CoV-2, Summer 2021*, 326 JAMA 1001, 1002 (2021), <https://bit.ly/3bVL5Cj>.

<sup>31</sup> Katherine Lontok, *How Effective Are COVID-19 Vaccines in Immunocompromised People?*, Am. Soc’y for Microbiology (Aug. 12, 2021), <https://bit.ly/3F24HBh>.

History has shown that vaccine requirements are critical to achieving the degree of vaccination necessary to curb or eradicate infectious disease. Countries or states that mandated smallpox vaccination saw 10 to 30 times fewer smallpox cases than those that declined to do so.<sup>32</sup> Before compulsory school vaccination laws were in place throughout the United States, states with strict vaccination requirements had incidence rates of measles less than half those of states that did not.<sup>33</sup> More recently, in a report by the CDC of measles occurrences in the United States between January 4 through April 2, 2015, a total of 159 cases were reported, including in Georgia.<sup>34</sup> “Over 80% of the cases occurred among persons who were unvaccinated or had unknown vaccination status.”<sup>35</sup> The report went on to conclude that the “continued risk for importation of measles into the United States and

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<sup>32</sup> Rajaie Batniji, *Historical Evidence to Inform COVID-19 Vaccine Mandates*, 397 *Lancet* 791 (2021), <https://bit.ly/3pW3HbR> (citing Frank Fenner, et al., World Health Org., *Smallpox and Its Eradication* (1988)).

<sup>33</sup> Kevin M. Malone & Alan R. Hinman, *Vaccination Mandates: The Public Health Imperative and Individual Rights*, in *Law in Public Health Practice* 262 (1st ed., 2003), <https://bit.ly/3BUviyg>.

<sup>34</sup> Nakia S. Clemmons, *et al.*, *Measles — United States, January 4–April 2, 2015*, *Morbidity and Mortality Weekly Rep.*, Vol. 64 Issue 14: 373–376 (Apr. 17, 2015), <https://bit.ly/3l3bkvK>.

<sup>35</sup> *Id.*

occurrence of measles cases and outbreaks in communities with high proportions of unvaccinated persons *highlight the need for sustained, high vaccination coverage across the country.*<sup>36</sup> Similarly, the more federal contractor employees who are vaccinated, the better protected all employees—vaccinated and unvaccinated alike—will be.<sup>37</sup>

#### **IV. Widespread vaccination is the most effective way to protect federal contractor employees from COVID-19.**

The statistics on COVID-19 vaccine efficacy speak for themselves. No other measure has been shown to reduce the risk of infection, hospitalization, and death to the degree that vaccination does. The science is clear: no arguments against the need for vaccination are medically valid, other than to accommodate a medical contraindication.

Natural immunity—the immunity against SARS-CoV-2 that develops following recovery from infection—is not an adequate substitute for vaccination.<sup>38</sup> Infection carries a significant risk of death or serious

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<sup>36</sup> *Id.* (emphasis added).

<sup>37</sup> *See, e.g., Florida v. HHS*, Case No. 21-14098, 2021 WL 5768796, at \*17 (11th Cir. Dec. 6, 2021) (“Imposing an injunction to bar enforcement of the interim rule would harm the public interest in slowing the spread of COVID-19 . . .”).

<sup>38</sup> *See* Catherine H. Bozio et al., *Laboratory-Confirmed COVID-19 Among Adults Hospitalized with COVID-19-Like Illness with Infection-Induced or mRNA Vaccine-Induced SARS-CoV-2 Immunity – Nine States*,



illness; vaccination does not. Moreover, vaccination better protects previously infected people against reinfection. Studies have shown that unvaccinated people are at least twice as likely to become reinfected as are vaccinated people.<sup>39</sup> There is no evidence that vaccination is harmful to people who were previously infected.

Other mitigation measures, such as mask wearing and social distancing, remain important. They do not, however, provide the same level of protection against COVID-19 as does vaccination. Although face masks can be highly effective at limiting the transmission of SARS-CoV-2, many people choose not to wear face masks, even when encouraged or legally required to do so. Noncontinuous mask-wearing has been shown to result in the spread of COVID-19 in the workplace.<sup>40</sup>

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*January–September 2021*, 70 Morbidity & Mortality Weekly Rep. 1539 (2021), <https://bit.ly/3kvoBwR> (finding 5.5 times higher odds of laboratory-confirmed COVID-19 among previously infected patients than among fully vaccinated patients).

<sup>39</sup> Alyson M. Cavanaugh et al., *Reduced Risk of Reinfection with SARS-CoV-2 After COVID-19 Vaccination — Kentucky, May–June 2021*, 70 Morbidity & Mortality Weekly Rep. 1081 (2021), <https://bit.ly/306e4Bg>.

<sup>40</sup> Donatella Sarti et al., *COVID-19 in Workplaces: Secondary Transmission*, 65 Annals Work Exposures & Health 1145 (2021), <https://bit.ly/3Cj6oJ3>.



Immediate, widespread vaccination against COVID-19 promotes workplace efficiency and reduces worker absenteeism. It is the surest way to protect federal contractor employees and the public and to end this costly pandemic.

### CONCLUSION

For the reasons stated above and in Defendants-Appellants' filings, *Amici* urge this Court to grant Defendants-Appellants' motion for stay pending appeal.

Respectfully submitted,

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## **CERTIFICATE OF COMPLIANCE**

This document complies with the type-volume limit of Fed. R. App. P. 29(a)(5) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 2,566 words according to the word count function of Microsoft Word 365.

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/s/ Michael A. Caplan

Date: December 14, 2021

### **CERTIFICATE OF SERVICE**

I hereby certify that on December 14, 2021, a true and accurate copy of the foregoing motion was electronically filed with the Court using the CM/ECF system. Service on counsel for all parties will be accomplished through the Court's electronic filing system.

/s/ Michael A. Caplan

Date: December 14, 2021